

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #09	CCRB Case #: 202103908	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/12/2021 4:30 PM	Location of Incident: 544 Flatbush Ave, 544 A Flatbush Ave, Southwest Corner of Flatbush and Lincoln RD, 71st PCT SH	18 Mo. SOL 8/12/2022	Precinct: 71		
Date/Time CV Reported Thu, 06/17/2021 11:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/30/2021 10:43 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Owens	08023	961051	071 PCT
2. POM Michael Haber	11401	955967	071 PCT
3. LT Daniel Guida	00000	941862	061 DET
4. DTS Michael Gonzalez	05947	943313	071 PCT
5. PO Clifford Scanlon	02893	961253	INT FIO PRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Denzil Trim	14723	956307	071 PCT
2. DT3 Triston Trunk	03628	958131	INT FIO PRG
3. SGT Charles Arnone	00408	950021	INT FIO PRG
4. PO Adam Elmaadawy	10563	956618	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Thomas Owens	Abuse: Police Officer Thomas Owens entered 544 Flatbush Ave in Brooklyn.	
B . LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered 544 Flatbush Ave in Brooklyn.	
C . POM Thomas Owens	Abuse: Police Officer Thomas Owens searched 544 Flatbush Ave in Brooklyn.	
D . LT Daniel Guida	Abuse: Lieutenant Daniel Guida searched 544 Flatbush Ave in Brooklyn.	
E . POM Thomas Owens	Abuse: Inside 544 Flatbush Avenue in Brooklyn, Police Officer Thomas Owens seized § 87(2)(b) property.	
F . LT Daniel Guida	Abuse: Inside 544 Flatbush Avenue in Brooklyn, Lieutenant Daniel Guida seized § 87(2)(b) property.	
G . DTS Michael Gonzalez	Abuse: Detective Michael Gonzalez stopped § 87(2)(b)	
H . LT Daniel Guida	Abuse: At the Southwest corner of Flatbush Avenue and Lincoln Road in Brooklyn, Detective Michael Gonzalez stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I . POM Thomas Owens	Abuse: Police Officer Thomas Owens entered 544A Flatbush Avenue in Brooklyn.	
J . POM Thomas Owens	Abuse: Police Officer Thomas Owens searched 544A Flatbush Avenue in Brooklyn.	
K . POM Michael Haber	Abuse: Police Officer Michael Haber entered 544A Flatbush Avenue in Brooklyn.	
L . POM Michael Haber	Abuse: Police Officer Michael Haber searched 544A Flatbush Avenue in Brooklyn.	
M . PO Clifford Scanlon	Abuse: At the 71st Precinct Stationhouse, Police Officer Clifford Scanlon made a sexually suggestive remark to § 87(2)(b)	
N . PO Clifford Scanlon	Discourtesy: At the 71st Precinct Stationhouse, Police Officer Clifford Scanlon spoke discourteously to § 87(2)(b)	

Summary

On June 17, 2021, this complaint was filed with the NYPD's Internal Affairs Bureau (IAB), and was received at the CCRB on June 30, 2021, via log number § 87(2)(b).

On February 12, 2021, at approximately 4:30 p.m., Lieutenant Daniel Guida, Police Officer Thomas Owens - both of the 71st Precinct, additional members of the 71st Precinct, and members of the NYPD's Intelligence Unit (318) walked into Prospect CBD and Smoke Shop located at 544 Flatbush Avenue in Brooklyn. Immediately upon entering, PO Owens went to the back of the store and entered a concealed, raised storage area; where, he searched various boxes and supplies (**Allegations A and B: Abuse of Authority – Entry, § 87(2)(g)** (**Allegations C and D: Abuse of Authority – Search of Premises, § 87(2)(g)** In addition to the back storage area, a full and comprehensive search of all other areas in the location was conducted (**within Allegations A, B, C, and D**), resulting in the seizure of store supplies and equipment (**Allegations E and F: Abuse of Authority – Seizure of Property, § 87(2)(g)**).

While officers were standing at the entrance of 544 Flatbush Avenue, Detective Michael Gonzalez of the Intelligence Unit saw § 87(2)(b) who he believed to be connected to Prospect CBD. With the permission of Lieutenant Guida, Det. Gonzales followed § 87(2)(b) to the Southwest corner of Flatbush Avenue and Lincoln Road and stopped § 87(2)(b) (**Allegations G and H: Abuse of Authority – Stop, § 87(2)(g)**).

As Det. Gonzalez did so, Lieutenant Guida, PO Owens, and Police Officer Michael Haber went into the store front at 544A Flatbush Avenue. While Lieutenant Guida was speaking with the store clerk, PO Owens entered and searched the area behind the front counter of the store (**Allegation I: Abuse of Authority – Entry, § 87(2)(g)** (**Allegations J: Abuse of Authority – Search of Premises, § 87(2)(g)** PO Haber also opened the door to two concealed rooms at the back of the store and searched inside (**Allegation K: Abuse of Authority – Entry, § 87(2)(g)** (**Allegation L: Abuse of Authority – Search of Premises, § 87(2)(g)**).

Ultimately, § 87(2)(b) and § 87(2)(b) the two employees inside Prospect CBD, were arrested and removed to the 71st Precinct stationhouse. While there, § 87(2)(b) was allegedly interviewed by Police Officer Clifford Scanlon, of the Intelligence Unit; during which, he allegedly told her that he would not “fuck” a girl like her because she is a tough girl (**Allegation M: Abuse of Authority – Sexual Harassment, Verbal, § 87(2)(g)** (**Allegation N: Discourtesy – Word, § 87(2)(g)**).

§ 87(2)(b)
The investigation received body-worn camera (BWC) footage from the NYPD Legal Bureau (**Board Review 02**). § 87(2)(b) attorney, § 87(2)(b) provided video surveillance video footage from Prospect CBD (**Board Review 03**).

Since the incident date, PO Scanlon was promoted to the rank of Detective.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Thomas Owens entered 544 Flatbush Ave in Brooklyn.

Allegation (B) Abuse of Authority: Lieutenant Daniel Guida entered 544 Flatbush Ave in Brooklyn.

Allegation (C) Abuse of Authority: Police Officer Thomas Owens searched 544 Flatbush Ave in Brooklyn.

Allegation (D) Abuse of Authority: Lieutenant Daniel Guida searched 544 Flatbush Ave in Brooklyn.

Allegation (E) Abuse of Authority: Inside 544 Flatbush Avenue in Brooklyn, Police Officer Thomas Owens seized § 87(2)(b) property.

Allegation (F) Abuse of Authority: Inside 544 Flatbush Avenue in Brooklyn, Lieutenant Daniel Guida seized § 87(2)(b) property.

It is undisputed that Prospect CBD did not have a business license at the time of the incident. It is also undisputed that there was a second business operating inside the location, a hair salon/parlor. Additionally, it is undisputed that the officers, led by PO Owens and Lieutenant Guida, did not have a search warrant for the location. Finally, it is undisputed that a large amount of the store's for-sale-products, products in storage spaces, and three safes were seized as a result of the search.

§ 87(2)(b) stated that at the time of the incident she was behind the counter inside 544 Flatbush Avenue when approximately five to 10 NYPD officers entered (**Board Review 04**). Lieutenant Guida told her that the officers were conducting a "business inspection" and she was instructed to leave from behind the counter. Officers, including Lieutenant Guida, walked behind the counter and began to search. Other officers fanned out across the store.

§ 87(2)(b) the owner of Prospect CBD, who was not present for the incident, stated that his business did not sell tobacco products (**Board Review 05**). The only smokable product he sold was CBD, which was not regulated at the time of the incident.

During his CCRB statement, PO Owens stated that he learned about possible illicit activity inside 544 Flatbush Ave after seeing posted advertisements for weed delivery in various buildings in the 71st Precinct (**Board Review 05**). Subsequently, the advertisements led him to an Instagram page advertising the sale of "exotic Fanta sodas." The sale of the exotic sodas suggested to him that the business may also be selling codeine to go with the exotic sodas. Beyond that, there was no further indication of codeine sales. The Instagram page listed 544 Flatbush Avenue as its business address, connecting Prospect CBD to the advertisements. This, along with observations of teens hanging outside of the store, previous car stops and arrest made outside of the store, and other tangentially associated information, made PO Owens decide to speak Lieutenant Guida so that a "business inspection" be conducted at the location. After speaking with Lieutenant Guida, PO Owens spoke with the 71st Precinct's assigned Field Intelligence Team (FIT).

PO Owens also stated that he did not recall whether any database searches were conducted to determine whether Prospect CBD had a license to operate. When asked during his CCRB statement, PO Owens stated that any business is subject to a business inspection. He explained that officers can go to any business to ask if they have a license, and if any "violations" are observed the business can be searched.

PO Owens did not go into Prospect CBD as a part of his investigation before the enforcement in question.

When PO Owens arrived at Prospect CBD on February 12, 2021, he was in the same vehicle as Lieutenant Guida and was at the front of the line of entering officers. Immediately upon entering, PO Owens went "straight" to the back of the store. PO Owens did not observe any clear "violation" while walking to the back of the store. He saw green vegetative substances stored the casing serving as the front counter; however, what he saw could have been CBD or marijuana. After arriving at a back room, PO Owens saw was a raised platform. On the platform was an individual, § 87(2)(b)

and he instructed her to get down. PO Owens then climbed a ladder onto the platform. He did so because he did not want anyone “popping out” on the officers.

While on the raised platform, PO Owens saw boxes of THC infused candies and nicotine electronic cigarettes. He searched the platform thoroughly. Ultimately, the boxes of seemingly illegal substances were seized by PO Owens.

PO Owens added that a THC field test was conducted during the incident, and that it returned positive results. PO Owens did not recall when and by who the test was conducted. He knew that the test was conducted with positive results because he heard conversation of other officers about substances “testing positive.” The test was conducted “early on” in his time in the store, but he did not know about it when he went to the raised platform. Ultimately, the entire store was searched and a large quantity of supplies and some equipment were seized.

During his CCRB statement, Lieutenant Guida stated that a search for tobacco licenses associated with the address were conducted and yielded negative results (**Board Review 06**). He did not know who conducted the search, but he knew that it was conducted and that the search yielded negative results.

Lieutenant Guida also stated that in the weeks leading up to February 12, 2021, the 71st Precinct received intelligence relating to Prospect CBD. The intelligence was that “pills” and “lean” or “sizzurp” were being sold at the location. Lieutenant Guida did not recall how he became aware of the intelligence. He added that PO Owens and his partner PO Haber had gone “in and out of location” multiple times confirming that the business sold tobacco products. Based on the known intelligence, Lieutenant Guida decided that a business inspection would be conducted at the location on the grounds of illegal tobacco sales.

After going to the location on February 12, 2021, Lieutenant Guida saw vegetative marijuana in plain view. The vegetative marijuana was in various sized containers that were clear, so the marijuana was visible. An officer used a THC field test kit on the suspected marijuana and the test returned positive for THC. He stated that he did not know when the field test took place but was certain that it happened. Lieutenant Guida did not recall whether the positive field test was conducted before or after the search of the store began.

He added that after initial contraband was found, § 87(2)(b) and § 87(2)(b) were placed under arrest. They were arrested because they were the custodians of the store at that time of this enforcement. The search of the entire store commenced, resulting in the seizure of supplies and equipment.

Lieutenant Guida’s BWC captures him arriving in and exiting a marked NYPD vehicle (**Board Review 07**). He enters Prospect CBD at the 58 second mark. Lieutenant Guida walks to the back of the store, past the front counter that spans close to the entire depth of the store, sans a few feet for access. At the back of the store, at 1:08, PO Owens is depicted entering a back storage area, and at 1:15 he is depicted asking who was on a raised platform in that back area. He then instructs someone to comedown and § 87(2)(b) is depicted descending.

At 1:21, when Lieutenant Guida walks back to the center of the store, § 87(2)(b) is depicted standing on the public side of the counter and officers are depicted behind the long counter.

At 3:40, Lieutenant Guida goes to the same back storage area and calls to PO Owens, asking “Tommy, you good up there?” PO Owens, who is alone, immediately responds, “yeah, just going through a bunch of shit.” At 4:00, after PO Owens tells Lieutenant Guida that there is a safe there, Lieutenant Guida steps onto the ladder and looks on the platform. At 4:15, Lieutenant Guida opens a random container in the back storage room, below the platform, and takes something out that he inspects.

At 4:23, Sergeant Charles Arnone of the Field Intelligence Unit is heard asking, “Where is L-T?” Lieutenant Guida responds, “Right here. Sgt. Arnone then asks the Lieutenant if he wants them to do a “92,” NYPD radio code for an arrest. Lieutenant Guida affirms.

Sgt. Arnone’s BWC captures the above-described exchange with Lieutenant Guida between 3:41 and 3:47 (**Board Review 08**). Just before, at 3:25, Sgt. Arnone calls to Det. Gonzalez,

referring to him as “Michael,” and shows him the THC field test. Det. Gonzalez takes the test and confirms that “it’s positive” at 3:36.

Based on the information obtained from the BWCs of Lieutenant Guida and Sergeant Arnone, the investigation determined that the positive THC result came after officers took control of the store and began searching.

The investigation was unable to determine whether the hair salon sharing the space was licensed to operate.

Given that PO Owens stated that he never went into Prospect CBD as a part of his investigation, Lieutenant Guida’s statement that PO Owens had gone into the location to confirm tobacco sales before the incident in question is discredited.

People v. Ortiz, 524 N.Y.S.2d 655 (Board Review 09). Commercial properties are entitled to Fourth Amendment protections, except areas of the business open to the public.

In defining a “search” for Fourth Amendment purposes, the United States Supreme Court has enunciated a two-prong “expectation of privacy” test. First, the person must have exhibited an actual, subjective, expectation of privacy. Second, the expectation is one that society is prepared to recognize as reasonable.

The plain view exception to a seizure without a warrant must satisfy various elements. The officer must be present lawfully, discovery of evidence must be inadvertent, and some exigency must exist to justify immediate seizure of the property.

New York v. Burger, 482 U.S. 691 (Board Review 10). The expectation of privacy a business owner has in a commercial property exists not only with respect to “traditional police searches” to find evidence, but also with respect to administrative inspections designed to enforce regulatory statutes.

For the warrantless inspection of a “pervasively regulated business” to be deemed reasonable, three criteria need to be met. First, there must be a “substantial” government interest that informs the regulatory scheme pursuant to which the inspection is made. Second, the warrantless inspection must be “necessary to further the regulatory scheme.” Finally, the statute’s inspection program must provide a constitutionally adequate substitute for a warrant.

People v. Scott, 79 N.Y.2d 474 (Board Review 11). The so-called “administrative search” exception to the Fourth Amendment warrant requirement cannot be invoked where the search is undertaken solely to uncover evidence of criminality and the underlying regulatory scheme is designed simply to give the police an expedient means of enforcing penal sanctions.

§ 87(2)(g) the area entered and searched by PO Owens was concealed at the back of the store and required one to climb a ladder onto a make-shift platform, § 87(2)(g). The nature of the space, out of the view of and immediate access to the public, established that the expectation of privacy would be recognized by broader society.

§ 87(2)(g)

Business areas behind counters are widely perceived by society to be accessible to custodians and affiliates of the business only. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Immediately upon entering, even before coming across the alleged illegal substances, the officers seized control of all areas under the purview of

Prospect CBD; § 87(2)(g)

Allegation (G) Abuse of Authority: At the Southwest corner of Flatbush Avenue and Lincoln Road in Brooklyn, Detective Michael Gonzalez stopped § 87(2)(b)

Allegation (H) Abuse of Authority: At the Southwest corner of Flatbush Avenue and Lincoln Road in Brooklyn, Lieutenant Daniel Guida stopped § 87(2)(b)

It is undisputed that Det. Gonzalez was wearing the BWC camera of Police Officer Jeffery Rosa, of the 71st Precinct (**Board Review 12**). It is also undisputed that PO Rosa was not present during the incident in question.

The BWC worn by Det. Gonzalez during the incident captures him speaking with Lieutenant Guida at the front door of 544 Flatbush Avenue beginning at 2:15 (**Board Review 13**). At 2:41, Det. Gonzalez says to Lieutenant Guida, “Okay, so this Spanish guy right here, that’s his girlfriend we just locked up.” Lieutenant Guida asks, “How do you know that?” Det. Gonzalez responds that he believes the male in question, identified as § 87(2)(b) was arrested prior. When that happened, either § 87(2)(b) or § 87(2)(b) went to “jail” to give § 87(2)(b) food. Det. Gonzalez also stated that the male he was talking about was inside 544A Flatbush Avenue, the neighboring storefront. At 3:09, Lieutenant Guida goes back into 544 Flatbush Avenue and calls to PO Owens and PO Haber.

At 3:47, a male in a camouflage jacket walks out of 544A Flatbush Avenue across the view of the BWC. Immediately after, at 3:48, Det. Gonzalez asks, “Should I stop this gentleman?” After he clarifies that § 87(2)(b) had exited 544A Flatbush Avenue, Lieutenant Guida says, “Alright, Grab him.” Det. Gonzalez then runs after § 87(2)(b) and catches up with him at the Southwest Corner of Flatbush Avenue and Lincoln Road. Det. Gonzalez immediately asks § 87(2)(b) if he has ID. Seconds later, PO Scanlon comes into frame standing in front of Det. Gonzalez.

After obtaining § 87(2)(b) first name, at 4:20 PO Scanlon says, “Listen, my man, you’re being stopped by the police. Do you understand that?”

The officers remain speaking with § 87(2)(b) until 6:39 and allow him to leave after they obtain his name, where he lives, and why he was there.

During his CCRB interview, Det. Gonzalez stated that he believed § 87(2)(b) to have been an individual who was arrested approximately two weeks before the incident date (**Board Review 12**). That arrest was not related to 544 Flatbush Avenue in anyway. Det. Gonzalez reaffirmed, as depicted in the BWC, that he saw either § 87(2)(b) or § 87(2)(b) go to the stationhouse to give the arrested male food. For that reason, he believed that § 87(2)(b) was connected to either § 87(2)(b) or both. When asked, Det. Gonzalez stated that he did not know for sure that § 87(2)(b) was the same individual visited at the stationhouse, but he suspected it. He did know that it was either § 87(2)(b) or § 87(2)(b) that visited the arrested individual at the stationhouse.

Det. Gonzalez decided to follow § 87(2)(b) and stop him on the suspicion that he was connected to either § 87(2)(b) or both. When asked what crime § 87(2)(b) was reasonably suspected to have committed, Det. Gonzalez stated that the suspected connection to § 87(2)(b) and/or § 87(2)(b) potentially linked § 87(2)(b) to the store. If he stopped § 87(2)(b) and § 87(2)(b) stated that he “worked at the store” then he would have been subject to arrest. Det. Gonzalez let § 87(2)(b) go because he did not have reason to take further action based on the interaction; however, he did not rule out that § 87(2)(b) could be the individual arrested two weeks prior to the incident.

When interviewed, Lieutenant Guida stated that Det. Gonzalez pointed out § 87(2)(b) because an officer had intelligence that the owner of the store, and possible boyfriend of § 87(2)(b) or § 87(2)(b) was wearing a camouflage jacket (**Board Review 06**). § 87(2)(b) was wearing a camouflage jacket. For that reason, on the information relayed to him by Det. Gonzalez, Lieutenant Guida instructed Det. Gonzalez to stop the male in the camouflage jacket, § 87(2)(b) on reasonable

suspicion that he was connected to Prospect CBD.

Based on comprehensive BWC video and Det. Gonzalez's statement to the CCRB, the investigation has determined that Det. Gonzalez did not communicate to Lieutenant Guida that § 87(2)(b) may be the owner of the store; rather, he communicated that § 87(2)(b) may be connected to § 87(2)(b) and/or § 87(2)(b).

People v. De Bour, 40 N.Y.2d 210 (Board Review 14). Before the police may stop a person pursuant to the common-law right to inquire there must exist at that moment a founded suspicion that criminal activity is present.

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Thomas Owens entered 544A Flatbush Avenue in Brooklyn.

Allegation (J) Abuse of Authority: Police Officer Thomas Owens searched 544A Flatbush Avenue in Brooklyn.

Allegation (K) Abuse of Authority: Police Officer Michael Haber entered 544A Flatbush Avenue in Brooklyn.

Allegation (L) Abuse of Authority: Police Officer Michael Haber searched 544A Flatbush Avenue in Brooklyn.

It is undisputed that after Det. Gonzalez and PO Scanlon followed § 87(2)(b) Lieutenant Guida, PO Owens and PO Haber went into 544A Flatbush Avenue, the storefront neighboring Prospect CBD. It is also undisputed that the officers did not have a warrant to search that storefront.

During his CCRB statement, Lieutenant Guida stated that he got information that the owner/potential boyfriend in the camouflage jacket went into 544A Flatbush Avenue and that he was believed to have "dropped a bag" (**Board Review 06**). For that reason, he, PO Owens, and PO Haber went to 544A Flatbush Ave to ask whether a bag was dropped in there.

PO Owens' BWC video depicts him, Lieutenant Guida, and PO Haber go into 544A Flatbush Avenue, a convenience store, at the 9:00 minute-mark (**Board Review 15**). At 9:16, PO Haber walks to the side of the front counter, opens a low swinging door and goes behind the counter. Between 9:30 and 13:50, PO Owens begins to search various boxes, containers, bags and small storage areas behind the counter. While this is happening, Lieutenant Guida is speaking to the store clerk.

During his CCRB interview, PO Owens stated that his search behind the counter was part of a business inspection at that location also (**Board Review 05**). When asked what the business inspection was based on, PO Owens stated that a business inspection can be done at any business and at any time. The search was to find contraband and specified that he was looking for illegal cigarette sales and drugs. When asked what he knew on the day in question that prompted the search, he cited a previous interaction at the store, when then store clerk, § 87(2)(b) was caught illegally selling cigarettes because he did not have a license to sell tobacco.

PO Haber's BWC depicts Lieutenant Guida tell PO Haber that they were "going into the store next door...the boyfriend of § 87(2)(b) in there" at 7:50 (**Board Review 16**). He, Lieutenant Guida, and PO Owens then go into 544A Flatbush Avenue. At 8:14, PO Haber says that the officers were conducting a business inspection for the store.

Lieutenant Guida begins to speak with § 87(2)(b) at approximately the 9:45 minute-mark. PO Haber walks to the back of the storefront and opens two closed doors, looks inside, then closes the doors.

During his CCRB statement, PO Haber stated that while on scene, he, Lieutenant Guida and PO Owens went to 544A Flatbush Avenue because as the officers were arriving at the location, an individual was seen exiting the smoke shop and entering the bodega (**Board Review 17**). The

officers were concerned with that individual because he could have put “weapons” or “drugs” in the other storefront. When asked whether the PO Haber saw anything on that person indicating they had a weapon concealed, PO Haber said no. PO Haber opened and looked behind the doors in the store because he was looking for guns or drugs that may have been left by the individual allegedly seen going from the first storefront to the second.

People v. Ortiz, 524 N.Y.S.2d 655 (Board Review 09). Commercial properties are entitled to Fourth Amendment protections, except areas of the business open to the public.

In defining a “search” for Fourth Amendment purposes, the United States Supreme Court has enunciated a two-prong “expectation of privacy” test. First, the person must have exhibited an actual, subjective, expectation of privacy. Second, the expectation is one that society is prepared to recognize as reasonable.

People v. Scott, 79 N.Y.2d 474 (Board Review 11). The so-called “administrative search” exception to the Fourth Amendment warrant requirement cannot be invoked where the search is undertaken solely to uncover evidence of criminality.

§ 87(2)(g) the area behind the counter was delineated from the public portion by the counter itself and the low swinging door, that the store owners exhibited an actual, subjective expectation of privacy. This, along with the fact that “behind the counter” of any business is widely perceived by society to be accessible to custodians and affiliates of the business only, establishes that there was in fact a reasonable expectation of privacy relating to the area behind the counter.

§ 87(2)(g)

§ 87(2)(g) the areas entered and search by PO Haber were concealed and required that he open doors to see inside, § 87(2)(g)

Allegation (M) Abuse of Authority: At the 71st Precinct Stationhouse, Police Officer Clifford Scanlon made a sexually suggestive remark to § 87(2)(b)

Allegation (N) At the 71st Precinct Stationhouse, Police Officer Clifford Scanlon spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after she was arrested and removed to the 71st Precinct Stationhouse, PO Scanlon took her into a room to speak with her alone (**Board Review 18**). There, he asked her questions related to her boyfriend. He asked her whether her boyfriend was a “pimp” and told her that he would not “fuck” a girl like her because she was a tough girl. After which, the conversation ended.

PO Scanlon stated that he did not debrief or speak with either arrestee on the incident date after returning to the stationhouse (**Board Review 19**). Furthermore, he stated that he left for the day “shortly after” returning to the command after the enforcement. PO Scanlon did not asked § 87(2)(b) if her boyfriend was a pimp or state that he would not fuck her because she is a tough girl.

During his CCRB statement, Sgt. Arnone, PO Scanlon’s supervisor, stated that PO Scanlon ended his tour not long after the officers returned to the stationhouse (**Board Review 20**). He was not able to be more specific.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 21**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 22**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 23**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 24**).
- PO Owens has been a member of service for six years, and has been a subject in seven other CCRB complaints and 10 other allegations, none of which were substantiated (see officer history). P § 87(2)(g)
- Lieutenant Guida has been a member of service for 16 years, and has been a subject in 22 other CCRB complaints and 99 other allegations, of which 17 allegations were substantiated (see officer history):
 - 201707882 involved substantiated allegations of a Frisk, a Search of person, and a Vehicle Stop against Lieutenant Guida. The Board recommended Charges, and ultimately NYPD imposed a penalty of five vacation days.
 - 202004652 involved substantiated allegations of Abuse of Authority – Entry of Premises, Failure to provide RTKA card (two), Frisk (two). Threat of Arrest, Threat to notify ACS (two), Discourteous Word (two), and Offensive Language. The Board Recommended charges, but the NYPD has not yet imposed discipline.
 - 202005460 involved substantiated allegations of Failure to provide RTKA card, Threat of Arrest, and Discourteous Word. The Board Recommended charges, but the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Haber has been a member of service for eight years and has been a subject in five other CCRB complaints and 10 other allegations, none of which were substantiated (see officer history). § 87(2)(g)
- Det. Gonzalez has been a member of service for 15 years and has been a subject in 25 other CCRB complaints and 57 other allegations, one of which was substantiated (see officer history):
 - 201212490 involved a substantiated Stop allegation. The Board recommended Command Discipline, but the NYPD did not impose discipline.
 - § 87(2)(g)
- PO Scanlon has been a member of service for six years and has been a subject in six other CCRB complaints and 15 other allegations, none of which were substantiated (see officer history). § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation due to a pending civil lawsuit.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming Due Process, additional constitutional violations, and other civil rights violations, seeking five million dollars as redress (**Board Review 25**). § 87(2)(b)
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming Due Process, additional constitutional violations, and other civil rights violations, seeking five million dollars

as redress (Board Review 25). § 87(2)(b)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 09

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	<u>Wassim Abedrabbo</u>	<u>IM Wassim Abedrabbo</u>	<u>07/07/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date